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Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS

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Application of Marinette County for a Permit to  
Construct a Snowmobile Bridge Over the Pike  
River, Town of Amberg, Marinette County,  
Wisconsin

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Case No. 3-NE-97-167

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Pursuant to due notice hearing was held on July 28, 1998, at Marinette, Wisconsin before Jeffrey D. Boldt, administrative law judge (ALJ) presiding.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Wisconsin Department of Natural Resources, by

Peter D. Flaherty, Attorney  
P. O. Box 7921  
Madison, WI 53707-7921

Marinette County Parks Department, by

Dave Hipwell, Administrator  
1926 Hall Avenue  
Marinette, WI 54143

Ranger City Riders, Inc., by

Dale Nutt, Director  
N13279 County V  
Amberg, WI 54102

Lorraine Seratti, State Representative  
P. O. Box 8953  
Madison, WI 53708

## FINDINGS OF FACT

1. Marinette County, 1926 Hall Avenue, P. O. Box 320, Marinette, Wisconsin, 54143-0320, completed filing an application with the Department of Natural Resources (the Department) for a permit under sec. 30.123, Stats., to construct a wood and metal snowmobile bridge over the Pike River, Town of Amberg, Marinette County. The Department and the applicant have fulfilled all procedural requirements of secs. 30.123 and 30.02, Stats.
2. The Town of Amberg owns real property located in the SE ¼, NW ¼ in Section 16, Township 35 North, Range 20 East, Marinette County. The above-described property abuts the Pike River which is navigable in fact at the project site. The proposed bridge would be placed by the co-applicants on Town of Amberg (the Town) park property with permission of the Town. The bridge, to be constructed of steel and wood, would be 65 feet long and 12 feet wide. The plan includes the use of natural colors to blend into the natural features at the site.
3. The Pike River "... in Marinette County from its mouth in Section 3, Township 34 North, Range 21 East, upstream to the headwater branches ..." is "a wild river" within the meaning of sec. 30.26, Stats. The Department has promulgated Chapter NR 302, "... to establish a management program designed to protect legislatively designated wild rivers from development so as to afford the people of this state an opportunity to enjoy those rivers in their natural and free-flowing condition and to assure the well-being of the Wisconsin tourist industry by attracting out-of-state visitors, which the legislative has deemed to be in public interest."
4. The purpose of the proposed bridge is in connection with a plan to enhance and re-route an existing snowmobile trail. The trail is highly used and brings many people to the area in winter months. With construction of the proposed bridge, snowmobile trail users could avoid crossing the bridge on County Highway "V." Further, construction of the bridge would aid in the overall reconfiguration of the trail to significantly reduce use of town streets as portions of the designated trail.
5. The proposed structure will not materially obstruct existing navigation on the Pike River. The parties stipulated that construction of the bridge would have no impact upon navigation on the Pike River.
6. The applicants have demonstrated that there is a safety hazard in the crossing of the County Highway "V" in the use of the existing snowmobile trail. Numerous credible witnesses testified that the existing bridge crossing is a hazard. (Nutt, Paash, Pfaff) A snowmobiler using the existing trail must cross the county highway at a location down a hill that obscures the visibility of approaching highway traffic. The trail-user is doubly vulnerable, because all of the snowmobile operators who testified indicated that it was difficult to control a snowmobile on a road surface.

7. The proposed project would have some detrimental impact on "natural scenic beauty" within the meaning of the Public Trust Doctrine. The existing site is largely free of human development. (Ex. 11) However, there is an abandoned logging dam in the immediate vicinity of the project site. The bridge design includes the use of natural colors which would blend with existing natural features. The detrimental impacts to natural scenic beauty would not be sufficient, in and of themselves, to deny the permit application given the serious safety problems on the existing trail and the lack of alternative routes to cross the river.

8. The proposed project does not meet the requirements of sec. NR 302.04(5), Wis. Admin. Code relating to a general prohibition of bridges on "wild rivers." The project does not relate to obtaining "reasonable access to a residential building" within the meaning of sec. NR 302.04(5)(a), Wis. Admin. Code. The applicants have demonstrated the need for vehicular traffic by snowmobile trail users, given the safety problems connected with the use of the existing trail.

9. The applicants are financially capable of constructing, maintaining, monitoring or removing the structure if it should be found in the public interest to do so.

10. The proposed structure will not reduce the effective flood flow capacity of the Pike River. The parties stipulated at hearing that construction of the proposed bridge would not have an impact upon the flood flow.

11. The proposed structure will not adversely affect water quality nor will it increase water pollution in the Pike River.

## DISCUSSION

The applicants made their case that there are safety problems connected with use of the existing crossing of County Highway "V." Accordingly, they have shown the need for snowmobile "vehicle passage" within the meaning of sec. NR 302.04(5)(b), Wis. Admin. Code. However, the administrative code bans all bridges on "wild rivers" unless they relate to "reasonable access to a residential building." Sec. NR 302.04(5)(a), Wis. Admin. Code. The administrative code as promulgated by the DNR can not be ignored by the Division. Further, the code reflects the public interest in limiting construction on the three designated wild rivers. The same project on a river not subject to sec. 30.26, Stats. and NR 302, Wis. Admin. Code would be approved.

## CONCLUSION OF LAW

1. The Division of Hearings and Appeals has authority pursuant to secs. 277.43(1)(b) and 30.123, Stats., to hear contested cases and issue necessary orders relating to applications for permits to build bridges across navigable waterways.

2. No person or organization may construct or maintain a bridge in, on or over navigable waters unless a permit has been issued by the DNR. The Pike River is a "navigable water" within the meaning of sec. 30.123, Stats.

3. The proposed bridge will not materially obstruct navigation nor will it adversely affect the flood flow capacity of the Pike River within the meaning of sec 30.123(4), Stats.

4. The Pike River at the project site is a "wild river" within the meaning of sec. 30.26, Stats. "Wild rivers" are so designated to receive special management to assure their preservation, protection and enhancement of their natural beauty, unique recreational and other inherent values in accordance with guidelines outlined in that section. ". In order to afford the people of this state an opportunity to enjoy natural streams, to attract out-of-state visitors and assure the well-being of our tourist industry, it is in the interest of this state to preserve some rivers in a free flowing condition and to protect them from development; and for this purpose a system of wild rivers is established, but no river shall be designated as wild without legislative act." Id.

5. To preserve the natural condition and beauty and other incidents of navigation in the wild rivers, no bridges, except as provided in sec NR 302.07 (relating to municipal and DOT highway bridges) shall be permitted unless they comply with the following requirements:

- (a) Reasonable access to a residential building is not available without use of a bridge crossing and the applicant proves a need as defined in paragraph (b);
- (b) Bridges shall be designed to accommodate foot traffic only unless an applicant proves a need, other than convenience, for vehicle passage over the bridge. (emphasis added) Sec. NR 302.04(5), Wis. Admin. Code.

The proposed snowmobile bridge does not relate to obtaining reasonable access to a residential building within the meaning of sec. NR 302 04(5)(a), Wis. Admin. Code. Accordingly, no bridge over the wild river may be built.

The applicants have shown a need for the bridge, namely the safety of users of the snowmobile trail.

6. An agency or hearing examiner shall take official notice of all rules which have been published in the Wisconsin Administrative Code or register. Sec. 227.45(4), Stats. Section 227.40, Stats., sets forth the "exclusive means" by which to challenge the validity of a properly promulgated administrative code.

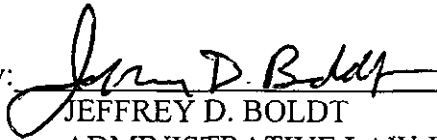
7. The proposed project would be "detrimental to the public interest" in the Pike River, as expressed in the administrative code banning the construction of bridges in, on or over a wild river as described in sec. 30.26, Stats.

ORDER

WHEREFORE, IT IS HEREBY ORDERED that the permit application shall be DENIED.

Dated at Madison, Wisconsin on August 11, 1998.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By:   
JEFFREY D. BOLDT  
ADMINISTRATIVE LAW JUDGE

## NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.